



January 29, 1999

HOUSE BILL No. 1039

DIGEST OF HB1039 (Updated January 21, 1999 10:25 am - DI 69)

Citations Affected: IC 29-1.

Synopsis: Unsupervised estates. Specifies the requirements for the administration of an estate without court supervision and without the consent of the heirs or devisees. Provides that a court may not require the personal representative to file with the court a copy of the inventory of the estate's assets prepared in the administration of the estate without court supervision. (The introduced version of this bill was prepared by the Probate Code Study Commission.)

Effective: July 1, 1999.

Foley, Mahern

January 6, 1999, read first time and referred to Committee on Judiciary.
January 28, 1999, reported — Do Pass.

HB 1039—LS 6188/DI 92+



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January 29, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1039

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 29-1-7.5-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The court may
3 grant a petition for administration without court supervision if:

4 (1) all the persons referred to in either section 1(a)(1) or 1(a)(2)
5 of this chapter have joined in the petition;

6 (2) the estate is solvent;

7 (3) the personal representative is qualified to administer the estate
8 without court supervision;

9 (4) the heirs, or legatees and devisees, or the parent (as defined in
10 IC 29-3-1-11), or if none, the guardian (as defined in IC 29-3-1-6)

11 of an heir, legatee, or devisee, as the case may be, freely consent
12 to and understand the significance of administration without court
13 supervision; and

14 (5) the will does not request supervised administration.

15 (b) ~~In addition,~~ **As an alternative to the requirements of**
16 **subsection (a),** the court may **also** grant a petition ~~without the~~
17 **requirements of subdivision (1) and the consent requirement of**

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1 ~~subdivision (4) being met, for administration without court~~
 2 ~~supervision if:~~

3 (1) the decedent in the will authorized the administration of the
 4 estate to be unsupervised; and if all other requirements of this
 5 subsection are met:

6 (2) the estate is solvent; and

7 (3) the personal representative is qualified to administer the
 8 estate without court supervision.

9 ~~(b)~~ (c) Once a petition for administration without court supervision
 10 has been granted **under subsection (a) or (b)**, a personal
 11 representative's authority, under such order, shall not be subject to any
 12 requirement of court approval or confirmation or be open to collateral
 13 attack on account of any defect or irregularity in the proceedings
 14 resulting in issuance of the order of no supervision, if the court issuing
 15 the order had jurisdiction of the estate.

16 ~~(c)~~ (d) The court may, on its own motion or the motion of an
 17 interested person, revoke an order of unsupervised administration and
 18 require an administration on terms and conditions which the court
 19 specifies if the court finds that such a revocation is in the best interests
 20 of the estate, creditors, taxing authorities, heirs, legatees, or devisees.

21 SECTION 2. IC 29-1-7.5-3 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. Subject to ~~section~~
 23 ~~2(c)~~ **section 2(d)** of this chapter, a personal representative who
 24 administers an estate under this chapter may do the following without
 25 order of the court:

26 (1) retain assets owned by the decedent pending distribution or
 27 liquidation including those in which the representative is
 28 personally interested or which are otherwise improper for trust
 29 investment;

30 (2) receive assets from fiduciaries or other sources;

31 (3) perform, compromise, or refuse performance of the decedent's
 32 contracts that continue as obligations of the estate, as he may
 33 determine under the circumstances. In performing enforceable
 34 contracts by the decedent to convey or lease land, the personal
 35 representative, among other possible courses of action, may:

36 (i) execute and deliver a deed of conveyance for cash payment
 37 of all sums remaining due or the purchaser's note for the sum
 38 remaining due secured by a mortgage or deed of trust on the
 39 land; or

40 (ii) deliver a deed in escrow with directions that the proceeds,
 41 when paid in accordance with the escrow agreement, be paid
 42 to the successors of the decedent, as designated in the escrow



- 1 agreement;
- 2 (4) satisfy written charitable pledges of the decedent irrespective
- 3 of whether the pledges constituted binding obligations of the
- 4 decedent or were properly presented as claims, if in the judgment
- 5 of the personal representative the decedent would have wanted
- 6 the pledges completed under the circumstances;
- 7 (5) if funds are not needed to meet debts and expenses currently
- 8 payable and are not immediately distributable, deposit or invest
- 9 liquid assets of the estate, including moneys received from the
- 10 sale of other assets, in federally insured interest-bearing accounts,
- 11 readily marketable secured loan arrangements or other prudent
- 12 investments which would be reasonable for use by trustees
- 13 generally;
- 14 (6) acquire or dispose of an asset, including land in this or another
- 15 state, for cash or on credit, at public or private sale; and manage,
- 16 develop, improve, exchange, partition, change the character of, or
- 17 abandon an estate asset;
- 18 (7) make ordinary or extraordinary repairs or alterations in
- 19 buildings or other structures, demolish any improvements, raze
- 20 existing or erect new party walls or buildings;
- 21 (8) subdivide, develop, or dedicate land to public use; make or
- 22 obtain the vacation of plats and adjust boundaries; or adjust
- 23 differences in valuation on exchange or partition by giving or
- 24 receiving considerations; or dedicate easements to public use
- 25 without consideration;
- 26 (9) enter for any purpose into a lease as lessor or lessee, with or
- 27 without option to purchase or renew, for a term within or
- 28 extending beyond the period of administration;
- 29 (10) enter into a lease or arrangement for exploration and removal
- 30 of minerals or other natural resources or enter into a pooling or
- 31 unitization agreement;
- 32 (11) abandon property when, in the opinion of the personal
- 33 representatives, it is valueless, or is so encumbered, or is in
- 34 condition that it is of no benefit to the estate;
- 35 (12) vote stocks or other securities in person or by general or
- 36 limited proxy;
- 37 (13) pay calls, assessments, and other sums chargeable or
- 38 accruing against or on account of securities, unless barred by the
- 39 provisions relating to claims;
- 40 (14) hold a security in the name of a nominee or in other form
- 41 without disclosure of the interest of the estate but the personal
- 42 representative is liable for any act of the nominee in connection



with the security so held;

(15) insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate;

(17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights **and** consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one (1) or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(i) in the same business form for a period of not more than five (5) months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will;

(ii) in the same business form for any additional period of time

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- 1 that may be approved by order of the court in a formal
 2 proceeding to which the persons interested in the estate are
 3 parties; or
 4 (iii) throughout the period of administration if the business is
 5 incorporated by the personal representative and if none of the
 6 probable distributees of the business who are competent adults
 7 object to its incorporations and retention in the estate;
 8 (25) incorporate any business or venture in which the decedent
 9 was engaged at the time of his death;
 10 (26) satisfy and settle claims;
 11 (27) distribute assets of the estate upon such terms as he may
 12 impose; and
 13 (28) perform any other act necessary or appropriate to administer
 14 the estate.

15 SECTION 3. IC 29-1-7.5-3.2 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3.2. (a) Not more than
 17 two (2) months after the appointment of a personal representative under
 18 this chapter, the personal representative shall prepare a verified
 19 inventory of the estate's assets. The inventory may consist of at least
 20 one (1) written instrument.

21 (b) The inventory required under subsection (a) must indicate the
 22 fair market value of each item of property of the decedent of which the
 23 personal representative has possession or knowledge, including a
 24 statement of all known liens and other charges on any item. The
 25 property shall be classified in the inventory as follows:

- 26 (1) Real property, with plat or survey description, and if a
 27 homestead, designated as a homestead.
 28 (2) Furniture and household goods.
 29 (3) Emblements and annual crops raised by labor.
 30 (4) Corporate stocks, including the class, the par value or that the
 31 stock has no par value, and if preferred stock, the dividend rate.
 32 (5) Mortgages, bonds, notes, or other written evidences of debt or
 33 of ownership described by the name of the debtor, recording data,
 34 and other identification.
 35 (6) Bank accounts, money, and insurance policies if payable to the
 36 estate of the decedent or to the decedent's personal representative.
 37 (7) All other personal property accurately identified, including the
 38 decedent's proportionate share in any partnership. However, no
 39 inventory of the partnership property is required.

40 (c) In preparing the inventory required under subsection (a), the
 41 personal representative may employ a disinterested appraiser to
 42 ascertain the fair market value as of the date of the decedent's death of



1 an asset that has a value that may be subject to reasonable doubt.
2 Different persons may be employed to appraise different kinds of assets
3 included in the estate. The names and addresses of any appraiser shall
4 be indicated on the inventory with the item or items the appraiser
5 appraised.

6 (d) The personal representative shall furnish a copy of the inventory
7 required under subsection (a), or a supplement or amendment to the
8 inventory, to a distributee who requests a copy.

9 **(e) The personal representative may certify to the court that the**
10 **inventory required under subsection (a), a supplement, or an**
11 **amendment to the inventory has been prepared and is available.**
12 **However, the court may not require the personal representative to**
13 **file a copy of the inventory, a supplement, or an amendment to the**
14 **inventory with the court.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1039, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

VILLALPANDO, Chair

Committee Vote: yeas 14, nays 0.

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